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APPENDIX TO PART 6101—FORM NOS. 1-5

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Form 2—Notice of Appearance

Form 3—Subpoena, GSA Form 9534

Form 4—Government Certificate of Finality

Form 5—Appellant/Protester/Intervenor/Applicant Certificate of Finality

AUTHORITY: 41 U.S.C. 601-613; 40 U.S.C. 759(f)(8).

SOURCE: 58 FR 69250, Dec. 30, 1993, unless otherwise noted.

§6101.0 Foreword.

The General Services Administration Board of Contract Appeals was established under the Contract Disputes Act of 1978, 41 U.S.C. 601-613, as an independent tribunal to hear and decide contract disputes between government contractors and the General Services Administration (GSA) and other executive agencies of the United States. The Board also hears and decides protests filed under the Brooks Automatic Data Processing Act, 40 U.S.C. 759(f), which involve procurements subject to that Act, and conducts proceedings as required under other laws. (The Board also is empowered to review decisions regarding the qualification of firms to enter into energy savings contracts pursuant to 42 U.S.C. 8287. In conducting such reviews, the Board will apply the rules pertinent to protests to the extent practicable. The Board will act in accordance with these rules and applicable standards of conduct so that the integrity, impartiality, and independence of the Board are preserved.

[60 FR 17026, Apr. 4, 1995]

6101.1 Scope of rules; definitions; construction; rulings and orders; panels; situs [Rule 1].

(a) *Scope.* The rules in this part govern proceedings in all cases filed with the Board on or after January 3, 1994,

and all further proceedings in cases then pending, except to the extent that in the opinion of the Board, their use in a particular case pending on the effective date would be infeasible or would work an injustice, in which event the former procedure applies. The Board will look to the rules in this part for guidance in conducting other proceedings authorized by law.

(b) *Definitions*—(1) *Appeal; appellant*. The term “appeal” means a contract dispute filed with the Board. The term “appellant” means a party filing an appeal.

(2) *Application; applicant*. The term “application” means a submission to the Board of a request for reimbursement of costs, under the Equal Access to Justice Act, 5 U.S.C. 504, or the Brooks Automatic Data Processing Act, 40 U.S.C. 759(f)(5)(C), pursuant to 6101.35. The term “applicant” means a party filing an application.

(3) *Board judge; judge*. The term “Board judge” or “judge” means a member of the Board.

(4) *Case*. The term “case” means an appeal, protest, petition, or application.

(5) *Filing*. (i) Any document, other than a notice of appeal or an application for costs, is filed when it is received by the Office of the Clerk of the Board during the Board’s working hours. A notice of appeal or an application for costs is filed upon the earlier of (A) its receipt by the Office of the Clerk of the Board or (B) if mailed, the date on which it is mailed. A United States Postal Service postmark shall be prima facie evidence that the document with which it is associated was mailed on the date thereof.

(ii) Facsimile transmissions to the Board and the parties are permitted. Parties are expected to submit their facsimile machine numbers with their filings. The Board’s facsimile machine number is: (202) 501-0664. The filing of a document by facsimile transmission occurs upon receipt by the Board of the entire printed submission. Parties are specifically cautioned that deadlines for the filing of cases will not be extended merely because the Board’s facsimile machine is busy or otherwise unavailable at the time on which the filing is due.

(6) *Interested party*. The term “interested party” means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

(7) *Intervening agency*. The term “intervening agency” means either (i) the General Services Administration, (ii) the agency for which GSA or another agency is conducting the procurement, or (iii) any other agency, when the agency seeking to intervene has submitted a motion to intervene in a protest in accordance with 6101.5(a)(4)(ii) and the motion has been granted. An intervening agency described in paragraph (b)(7) (i) or (ii) will be accorded the same rights as an intervenor of right; an intervening agency described in paragraph (b)(7)(iii) will be accorded the same rights as a permissive intervenor.

(8) *Intervenor of right*. The term “intervenor of right” means (i) an interested party who files with the Board a notice of intervention in accordance with 6101.5(a)(4)(i) and who has not filed a protest concerning the same procurement with the United States General Accounting Office (GAO), or (ii) in a protest involving a procurement being conducted by an entity other than a Federal agency, the entity conducting the procurement.

(9) *Intervenor, permissive*. The term “permissive intervenor” means any entity that (i) is an interested party and has filed a protest concerning the same procurement at the GAO, has submitted a motion to intervene in a protest in accordance with 6101.5(a)(4)(iii), and whose motion has been granted, or (ii) has been permitted by the Board in its discretion to intervene in a case.

(10) *Party*. The term “party” means an appellant, applicant, petitioner, protester, respondent, intervenor of right, intervening agency, or permissive intervenor.

(11) *Petition; petitioner*. The term “petition” means a request filed under 41 U.S.C. 605(c)(4) that the Board direct a contracting officer to issue a written decision on a claim. The term “petitioner” means a party submitting a petition.

(12) *Prevailing party*. In a protest, a prevailing party is a party who has

demonstrated that a challenged action of a Federal agency violates a statute or regulation or the conditions of a delegation of procurement authority.

(13) *Protest; protester.* (i) The term “protest” means a written objection by an interested party to any of the following:

(A) A solicitation or other request by a Federal agency for bids or proposals for a contract for the procurement of property or services;

(B) The cancellation of such a solicitation or other request;

(C) An award or proposed award of such a contract;

(D) A termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

(ii) The term “protester” means an interested party who files a protest with the Board and who has not filed a protest with the GAO concerning the same procurement.

(14) *Respondent.* The term “respondent” means the Government agency whose decision, action, or inaction is the subject of an appeal, protest, petition, or application.

(15) *Working day.* The term “working day” means any day other than a Saturday, Sunday, or legal holiday.

(16) *Working hours.* The Board’s working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each working day.

(c) *Construction.* The rules in this part shall be construed to secure the just, speedy, and inexpensive resolution of every case. The Board looks to the Federal Rules of Civil Procedure for guidance in construing those Board rules which are similar to Federal Rules.

(d) *Rulings, orders, and directions.* The Board may apply the rules in this part and make such rulings and issue such orders and directions as are necessary to secure the just, speedy, and inexpensive resolution of every case before the Board. Any ruling, order, or direction that the Board may make or issue pursuant to the rules in this part may be made on the motion or request of any party or on the initiative of the Board. The Board may also amend, alter, or

vacate a ruling, order, or direction upon such terms as are just. In making rulings and issuing orders and directions pursuant to the rules in this part, the Board takes into consideration those Federal Rules of Civil Procedure which address matters not specifically covered herein.

(e) *Panels.* Each case will be assigned to a panel consisting of three judges, with one member designated as the panel chairman, in accordance with such procedures as may be established by the Board. The panel chairman is responsible for processing the case, including scheduling and conducting proceedings and hearings. In addition, the panel chairman may, without participation by other panel members, decide an appeal under the small claims procedure (6101.13), suspend procurement authority in a protest (6101.19(d)), rule on nondispositive motions (except for amounts in controversy under 6101.13(a)(2)), and dismiss a case if no party objects (6101.28(c)). All other matters, except for those before the full Board under 6101.30, are decided for the Board by a majority of the panel.

(f) *Situs.* The address of the Office of the Clerk of the Board is: Room 7022, General Services Administration Building, 18th and F Streets, NW., Washington, DC 20405. The Clerk’s telephone number is: (202) 501-0116. The Clerk’s facsimile machine number is (202) 501-0664.

[58 FR 69250, Dec. 30, 1993, as amended at 60 FR 17026, Apr. 4, 1995]

6101.2 Time: Enlargement; computation [Rule 2].

(a) *Time for performing required actions.* All time limitations prescribed in the rules in this part or in any order or direction given by the Board are maximums, and the action required should be accomplished in less time whenever possible.

(b) *Enlarging time.* Upon request of a party for good cause shown, the Board may enlarge any time prescribed by the rules in this part or by an order or direction of the Board. The exceptions are the time limits for filing appeals and protests (6101.5(b)(1) and (3)) and for convening the suspension hearing (6101.19(a)(2)). A written request is required, but in exigent circumstances an